

## **REMARKS/ARGUMENTS**

### **I. Introduction:**

Claims 1, 21, 28, and 30 are amended herein, claims 5, 6, 32, and 33 are canceled, and claims 52-57 are added herein. With entry of this amendment, claims 1-4, 7-31, and 34-57 will be pending.

### **II. Double Patenting Rejection:**

A Terminal Disclaimer to obviate the provisional double patenting rejection over co-pending patent application Serial No. 09/475,765 is submitted herewith.

### **III. Claim Rejections Under 35 U.S.C. 103:**

Claims 1-5, 7-12, 14-18, 20-21, 28-31, 35-41, 43-47, and 51 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,157,618 (Boss et al.) in view of U.S. Patent Application No. 2002/0065922 (Shastri). Claims 6, 19, 25-27, and 32-34 stand rejected under 35 U.S.C. as being unpatentable over Boss et al., Shastri, and U.S. Patent No. 6,449,739 (Landan).

Claim 1 is directed to a method of measuring performance of streaming media over a network and generally comprises: connecting a data acquisition agent to the network, receiving a list of measurement targets, associated configuration parameters, and schedule; sending a request for streaming media from the data acquisition agent to a media source connected to the network; receiving streaming media in response to the request for media at the data acquisition agent; monitoring the streaming media; collecting performance measurements for the streaming media; and sending the performance measurements to a data collection server configured for collecting and storing data received from a plurality of data acquisition agents.

Boss et al. disclose a distributed Internet user experience monitoring system in which data gathering client computers are connected to the Internet via local dial-up

connections. The client computers poll a central server for a target site to access. After receiving the address of a target site, the client computers access the target site and obtain performance parameter values indicative of the quality of their respective Internet connections to the target site. The client computer then sends the performance parameter values back to the same server it received the target values from for analysis. As noted by the Examiner, Boss et al. do not show or suggest requesting and receiving streaming media.

Shastri discloses a system for selection and redirection of an existing client-server connection to an alternate data server based on performance comparisons. The system allows for dynamic switching between server nodes based on Quality of Service (QoS). While a user is connected to an existing server, the system opens temporary client-server connections to alternate servers to sample QoS characteristics so that actual QoS values can be compared with estimated values to determine if the user should be switched to an alternate server. The data services may include streaming multimedia content. The system allows a user's station to dynamically select from servers any number of times during active playback of selected multimedia content.

Applicants respectfully submit that there is no suggestion to combine the teachings of Boss et al. with Shastri to produce the claimed invention. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. The system of Boss et al. simply accesses a target site, measures performance data, and sends data back to a server for analysis. In order to obtain performance measurements for a specific site, the data-gathering client remains in communication with the same server while downloading data. In contrast to Boss et al., Shastri is only concerned with comparing the QoS of connections to different servers so that a user can dynamically switch between two servers based on performance comparisons. Estimates of QoS are obtained and compared with the current QoS statistics to determine the best connection at a specific time. Boss et al. are interested in measuring performance characteristics that are useful in assessing a user experience to a particular target site. Since Shastri is continuously changing connections and monitoring a brief window of data collection in

order to determine an estimated QoS, there is no collection of performance characteristics that can be used to analyze connections at different target sites.

Furthermore, neither Boss et al. nor Shastri show or suggest receiving a list of measurement targets, associated configuration parameters, and schedule. As discussed above, the system of Shastri does not receive a list of specific targets to monitor and measure performance data. Boss et al. access a server to receive target sites but do not receive instructions as to when to gather data.

With respect to receiving a schedule, the Examiner cited Landan, which discloses a system for monitoring service performance. The system allows a user to assign execution schedules to particular agent machines. However, Landan does not teach generating a list of measurement targets, associated configuration parameters, and a schedule based on data received for each of the measurement targets. Applicants' invention is particularly advantageous in that a schedule generator uses information for each of the measurement targets to generate a schedule of when measurements should occur. Since Landan does not teach measuring performance data for streaming media, they are not concerned with information such as total time to play a clip of streaming media. Applicants' invention uses this information to sufficiently space the measurements and allow agents located at different geographic locations to monitor a site at the same time.

Accordingly, claim 1 is submitted as patentable over Boss et al., Shastri, and the other prior art of record.

Claims 2-4, 7-27, and 54-57, depending either directly or indirectly from claim 1, are submitted as patentable for the same reasons as claim 1.

Claim 21 is further submitted as patentable over the prior art of record which does not show or suggest a stream quality rating based on a startup score, audio score, and video score, wherein the stream quality rating is a value calculated based on a percentage of the startup score, audio score and video score. The stream quality rating allows for an overall performance rating which includes various percentages of different factors, which can be easily adjusted based on different user priorities.

Claim 28 is directed to a computer program product and claim 30 is directed to a system for measuring streaming media over a network. Claims 28 and 30 have been amended similar to claim 1 and are submitted as patentable for the reasons discussed above with respect to claim 1.

Claim 29 depending from claim 28, and claims 31-53, depending either directly or indirectly from claim 30, are submitted as patentable for the same reasons as claims 28 and 30.

The additional references cited including U.S. Patent Nos. 6,647,389 (Fitch et al.) and 6,584,153 (Gordon et al.) do not remedy the deficiencies of the primary references.

#### IV. Conclusion

For the foregoing reasons, Applicants believe that all of the pending claims are in condition for allowance and should be passed to issue. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at (408) 446-8695.

Respectfully submitted,



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